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No. 93-1974

IN THE
Supreme Court of the United States
OCTOBER TERM, 1994

ROGER W. TRACY,
TAX COMMISSIONER OF OHIO,
Petitioner,

v.

MCI TELECOMMUNICATIONS CORPORATION,
Respondent.

On Petition for a Writ of Certiorari to the Supreme Court of Ohio

RESPONDENT'S BRIEF IN OPPOSITION

Of Counsel:
WALTER NAGEL
DOUGLAS A. RICHARDS
MCI TELECOMMUNICATIONS CORPORATION
1133 19th Street, N.W.
Washington, D.C. 20036
(202) 736-6216

TIMOTHY B. DYK
(Counsel of Record)
BETH HEIFETZ
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005-2088
(202) 879-3939

JOHN C. DUFFY, JR.
JONES, DAY, REAVIS & POGUE
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-3939
Counsel for Respondent

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QUESTION PRESENTED

Whether assessing the property of a long distance carrier at 100% of value while assessing the property of its direct competitors at only 31% of value constitutes a denial of equal protection under the United States Constitution, amend. XIV, § 1.

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RESPONDENT'S BRIEF IN OPPOSITION

STATEMENT

At issue in this case is the application of Ohio's personal property tax to MCI Telecommunications Corporation ("MCI"), an interexchange (long distance) carrier.[1] Petitioner, the Ohio Tax Commissioner, assessed MCI's property at 100% of value. At the same time, the Commissioner assessed the property of other interexchange carriers, who are direct competitors of MCI, at only 31%

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[1] The respondent in this case is MCI Telecommunications Corporation. Pursuant to this Court's Rule 29.1, following are the parent company, subsidiaries (except wholly-owned subsidiaries), and affiliates of respondent: MCI Telecommunications Corporation is a wholly-owned subsidiary of MCI Communications Corporation. MCI Network Technologies, Inc., QWest Properties, Inc., and Hines Ravinia III Limited Partnership are subsidiaries or affiliates of MCI Telecommunications Corporation.

of value. As a result, MCI was required to pay taxes in an amount essentially three times greater than that paid by others engaged in the same business. Based on these facts, the Ohio Supreme Court held that the Commissioner had violated the equal protection guarantees of both the Ohio and the United States Constitutions. The background of this case is as follows:

1. The Telecommunications Industry

In 1987, the sole tax year at issue, dozens of interexchange carriers operating in Ohio, including MCI, provided long distance service to their subscribers. (R. 650-660).[2] Each of these interexchange carriers had facilities and equipment, including switching devices, in the State that were essential to performing their function. (R. 305, 308, 310). In addition, some of these carriers owned fiber optic and/or microwave facilities through which long distance calls were transmitted. (R. 315, 467-468, 664-683, 1220-1232). Whether or not they owned such facilities, all of the carriers (with the possible exception of American Telephone & Telegraph ("AT&T")) regularly purchased or leased transmission capability from one another, and then resold this capacity to their customers. (R. 84-86, 102, 157-158, 1288-1290).

MCI and these other interexchange carriers are relative newcomers to the telecommunications industry. For most of this century, the entire telecommunications industry in the United States—both local and long distance—has been largely dominated by AT&T. *See United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 139 & n.19 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). In the 1970's, however, technological advances resulted in the development of alternatives to AT&T in the long distance market. This early competition was substantially enhanced

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[2] Citations to "R. ——" refer to the two volume Record of Appellant filed in the Ohio Supreme Court on August 26, 1992.

by AT&T's divestiture of the Bell Operating Companies ("BOCs"). *Id.* at 139.

Following divestiture, the telecommunications industry was sharply divided between local and long distance services. Local telephone service was and continues to be provided throughout most of the United States either by one of the BOCs or by the pre-existing independent local companies on a non-competitive basis.[3] *Id.* at 222-24. Long-distance services were and are provided on a competitive basis by hundreds of interexchange carriers. *See id.*

2. The Ohio Personal Property Tax

Until the 1987 return year, the Ohio tax code defined a "telephone company" to include both local and long distance carriers. Specifically, a "telephone company" was an entity "engaged in the business of transmitting to, from, through, or in [Ohio] telephonic messages." Ohio Rev. Code Ann. § 5727.01(E)(2) (Anderson 1986) (amended 1987). Under Ohio's tax code, a "telephone company" was deemed a "public utility." Ohio Rev. Code Ann. § 5727.01(A) (Anderson 1986). As a "public utility," the property of a "telephone company" was assessed at 100% of true value, rather than at the 31% of true value applicable to a non-utility business. This classification of telephone companies as public utilities reflected the realities of the market as it then existed.

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[3] These local telephone companies provide local access to interexchange carriers. *United States v. AT&T*, 552 F. Supp. 131, 141 & n.38 (D.D.C. 1982), *aff'd sub nom. Maryland v. United States*, 460 U.S. 1001 (1983). "Access" involves the origination and termination of a call. A long distance call first must be routed through the local network to the interexchange carrier's switch. The call is then handled by the interexchange carrier, who routes it over its network to the network of the local telephone company serving the point of termination. (R. 89-90). All interexchange carriers must purchase this access in order to provide long distance service. (R. 298).

Initially, with the exception of AT&T, all of the telephone companies engaged in business in Ohio provided local telephone service.[4] Each of these telephone companies enjoyed the traditional characteristics of a public utility, including monopoly status and regulated rates.

As the telecommunications industry began to change and the long distance business became competitive, the Ohio Legislature recognized that the tax structure required change as well. Effective July 1, 1987, the Ohio Legislature amended the statutory definition of "telephone company" to encompass only those entities "primarily engaged in the business of providing local exchange telephone service." Ohio Rev. Code Ann. § 5727.01(E)(2) (Anderson Supp. 1988). This change excluded interexchange (long distance) carriers from the "public utilities" category. *Id.* (amending Anderson 1986). *See also* 142 Laws of Ohio (Pet. II) 2342-44. The Legislature thus sharply divided local service providers, who retained their monopoly status and regulated rates, from long distance service providers, who were operating in a competitive market.

As a result, MCI and the other interexchange carriers were required to pay a number of Ohio taxes from which, due to their public utility classification, they had previously been exempt. These "new" taxes included, for example, the Ohio sales and use tax and the Ohio corporate franchise tax. Ohio Rev. Code Ann. §§ 5739.01 (B)(3)(f), 5739.01(AA), 5739.02(B)(7) (Anderson Supp. 1988). Coherent and consistent treatment would have resulted in assessing the property of interexchange carriers at 31% of value for purposes of the personal property tax. Apparently, however, the Legislature did not wish to forego the higher revenues that resulted from assessing the property of interexchange carriers at the

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[4] AT&T had a virtual monopoly on long distance service either through its Long Lines Division or its ownership of Ohio Bell Telephone Company.

level reserved for public utilities. (R. 582). The Legislature enacted an additional provision, requiring the Commissioner to assess the property of interexchange carriers at 100% of true value, the listing percentage for public utilities, despite the fact that the Legislature had just acknowledged that interexchange carriers were not public utilities. Specifically, the Legislature provided that:

> [i]n the case of a person that would have been a telephone company . . . prior to the effective date of the amendment . . . and that is not a telephone company . . . after the effective date of [the] amendment, all tangible personal property . . . of [such] persons . . . shall be valued and assesed by the tax commisioner in the same manner as taxable property of all public utilities except railroads.

Ohio Rev. Code Ann. § 5727.06(C) (Anderson Supp. 1988).

3. The Discriminatory Treatment

This case deals with discrimination *within* a class of taxpayers. There were more than 60 companies purchasing access—and thus providing long distance service—in Ohio in 1987. (R. 655-660). The discrimination at issue here arose because the Commissioner did not treat all of these long distance carriers equally in implementing the statute. In calculating MCI's property tax obligation for 1987, the Commissioner determined a true value of $105 million for taxable tangible personal property and applied the 100% listing percentage (assessment ratio). For 1987, MCI paid $6.8 million in Ohio alone, approximately three times the amount it would have had to pay if its property had been assessed at the 31% rate. (R. 120-121, 601-604, 605-608).

Unlike MCI, the personal property tax of many other interexchange carriers was assessed at the lower percentage of value. As the Commissioner has stipulated,

companies that he deemed "resellers," *i.e.*, those that are "primarily engaged in the business of acquiring long distance telephone service" from a facilities-based carrier and "reselling that long distance telephone service to [their] customers," were assessed at only 31% of value. Pet. App. A55. In contrast, the Commissioner claimed that long distance carriers that he deemed "facilities-based" (like MCI) were assessed at the 100% rate. *Id.* The consequence was that the same switching equipment was taxed at different rates.

The distinction asserted by the Commissioner was not in fact applied. As the record demonstrates, there were facilities-based carriers that also were assessed at only 31% of value. (*E.g.*, R. 231, 233-234, 271-276, 315, 661-772, 1027-1055). MCI was precluded from documenting each such instance of discriminatory treatment due to the Commissioner's resistance to turning over relevant documents he classified as confidential. However, at the administrative hearing, MCI was able to obtain and thereafter introduced into evidence detailed records of two of the interexchange carriers assessed at the lower rate.[5] These records from the Commissioner's own files demonstrated that both companies owned significant transmission equipment in the State, as did MCI, and that both companies constituted "facilities-based carriers" under the Commissioner's own definition, as did MCI. (R. 231, 233-234, 271-276, 315, 661, 1027). Faced with those documents, the Commissioner conceded at the hearing that "both of the companies should have been filing as a public utility as MCI has been," and that their property should have been assessed at the 100% rate. (R. 278).

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[5] These carriers were Allnet Communications Services, Inc. ("Allnet") and Cable & Wireless Management Services, Inc. ("Cable & Wireless").

4. The Proceedings Below

Based on the substantially lower listing percentage applied to its direct competitors, MCI requested that the Commissioner conduct a review and redetermination of MCI's 1987 property tax liability. Following a hearing, the Commissioner denied MCI's objections.

Thereafter, MCI appealed the Commissioner's determination to the Ohio Board of Tax Appeals ("BTA"), asserting that assessing MCI's taxable property at 100% of true value while assessing the personal property of other interexchange carriers at 31% of value, denied MCI equal protection of the law in violation of both the United States and Ohio Constitutions.[6] The BTA received all the evidence but, due to its limited jurisdiction, did not resolve the constitutional claims. Pet. App. A5. MCI appealed to the Ohio Supreme Court, again raising its claims that the tax statutes as applied to MCI violated the equal protection clauses of the United States and Ohio Constitutions.[7]

On appeal, the Ohio Supreme Court held that "two taxpayers within the same class owning or leasing the same type of equipment are treated differently, and this treatment denies MCI equal protection of the laws." Pet. App. A11. To the Court, "[t]he only distinction between MCI and resellers is that MCI, a facility-based carrier, owns or leases the transmission equipment while resellers lease [long distance] lines from other interexchange carriers," *id.* at A10, a distinction that lacked significance. In this connection, the Ohio Supreme Court noted that the body assigned regulatory authority over interexchange carriers had rejected the notion that

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[6] MCI raised state law claims as well as other state and federal constitutional claims.

[7] The Commissioner cross-appealed from the BTA's finding (on MCI's state law claim) that the taxable value of MCI's property was improperly apportioned. Pet. App. A26.

facilities-based carriers and resellers are distinct under the Ohio code. *Id.* at A11.

The Ohio Supreme Court relied on a decision of the Wisconsin Supreme Court, which reached the identical conclusion. *Id.* In *GTE Sprint Communications v. Wisconsin Bell*, 454 N.W. 2d 797 (Wis. 1990), the Wisconsin Supreme Court held that differential tax treatment of resellers and facilities-based carriers violates equal protection. The Wisconsin court explicitly rejected the argument that ownership of facilities is an adequate basis for differentiating between the resellers and these other carriers. *Id.* at 802. In addition, the Ohio Supreme Court relied on its own decision in *Boothe Financial Corp. v. Lindley*, 452 N.E.2d 1295 (1983), *cert. denied*, 464 U.S. 1057 (1984), in which it had held that taxing lessors of equipment differently from those who both manufactured and leased the same equipment constituted a denial of equal protection. Pet. App. A9-A10. Accordingly, the Ohio Supreme Court held that there was no basis for treating MCI differently and that assessing its property at 100% of value while assessing that of its direct competitors at only 31% of value constituted a denial of equal protection under the United States and the Ohio Constitutions. The petition for writ of certiorari followed.

REASONS FOR DENYING THE WRIT

Petitioner has shown no basis for granting certiorari in this case. This Court has expressly held that, notwithstanding the wide latitude accorded states in determining what and how to tax (*see Ohio Oil Co. v. Conway*, 281 U.S. 146, 159 (1930)), the equal protection clause "protects persons from unconstitutional discrimination by the states." *Metropolitan Life Ins. Co. v. Ward*, 470 U.S. 869, 881 (1985) (footnote omitted). The conclusion reflected in the decision below—that taxing the property of one interexchange carrier at 100% of value while taxing the property of that carrier's direct competitors at only 31% of value violates the equal protection clause—is fully consistent with and faithfully implements this Court's decisions. It is likewise consistent with the only other state supreme court to consider the question. At issue here is simply an application of established principles to the facts of this case, and review is not warranted.

I. THE OHIO SUPREME COURT CORRECTLY CONCLUDED THAT DISCRIMINATION WITHIN THE CLASS OF LONG DISTANCE CARRIERS IS UNCONSTITUTIONAL

It is by now well established that a taxpayer, although assessed at not more than true value, may be unlawfully discriminated against by undervaluation of property of other taxpayers in the same class. *Southern Rwy. v. Watts*, 260 U.S. 519, 526 (1923). As the record in this case makes clear, that is precisely what happened here. Indeed, the Commissioner conceded that MCI's property was assessed for property tax purposes at 100% of value while the property of other interexchange carriers, who are direct competitors of MCI, was assessed at only 31% of value. (R. 1288-1289).[8] The conclusion that this vio-

[8] The Commissioner's claim that "the alleged discrimination was totally theoretical" and "never proved" (Pet. Cert. 16) is unten-

lates equal protection is fully consistent with the decisions of this Court.

1. The Commissioner asserts that the discrimination can be explained because some of the interexchange carriers who were treated differently were "resellers of telephone services," and thus were unlike MCI, which the Commissioner considers to be a "facilities-based carrier." Pet. 12, 14. "Resellers," according to the Commissioner, lease transmission capability from other interexchange carriers and, using their own switching equipment, provide long distance services to their customers. (R. 84, 157-158, 1290). Facilities-based carriers, in contrast, which were assessed at the 100% rate, were those "operating, either through ownership or lease, an integrated system of switching devices . . . and associated equipment in a manner that would allow a telephone message to be sent . . . ." Pet. App. A54-A55.

The distinction urged by the Commissioner is directly contrary to the factual record in this case. According to the uncontroverted testimony at the hearing, "[t]here was no sharp distinction between resellers and other interexchange carriers . . . . Most interexchange carriers provide some combination of resale and their own facilities." (R. 86, 102). MCI "began as a reseller," as the Ohio Supreme Court recognized (Pet. App. A-3), and continued to operate as both a reseller and a facilities-based carrier. MCI directly competed with those interexchange carriers who, based on their "reseller status," were taxed at the lower rate. (R. 88, 158-159, 650). Both MCI and the other resellers provided long distance telephone service to customers. (R. 158-159). Both were subject

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able. It was implicitly rejected by the Ohio Supreme Court. Pet. App. A8. Equally significant, the Commissioner stipulated to the precise fact that he now claims was "never proved," *i.e.*, that "resellers" were treated differently than "facilities-based" carriers. Pet. App. A54-A55. The purpose of entering the stipulation was to eliminate the need for the Commissioner to produce taxpayer records, which he had resisted on confidentiality grounds.

to identical Ohio regulatory schemes. (R. 156-158, 310). Both were treated identically by Ohio for other tax and non-tax purposes. *Id.* The uncontroverted record demonstrates that all of these interexchange carriers, whether deemed "resellers" or otherwise, owned equipment essential to long distance transmission, including the "switching devices" specifically referenced in the Commissioner's own definition of a facilities-based carrier. (R. 305, 308).[9] As a result of the Commissioner's discriminatory scheme, the same equipment which was put to the same purpose was taxed at significantly different rates.

2. The Commissioner nonetheless suggests that the distinction between facilities-based carriers and resellers is permissible because it rests, he claims, on other rational bases. Pet. 14-18. Thus, the Commissioner argues, without citation to any authority or to the record, that facilities-based carriers "are squarely in a position to pass their costs on to their customers," while so-called "resellers" cannot. Pet. 15. This suggestion is contrary to the record. The record demonstrates that MCI's rates are actually set in the marketplace, which limits MCI's ability to pass along costs that are not borne in equal measure by its direct competitors. (R. 83, 88, 109-110, 156-157).[10]

Equally incorrect is the Commissioner's suggestion that distinguishing between facilities-based carriers and so-called "resellers" is permissible because it might "create

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[9] This Court has recently ruled that all of these carriers, whether functioning as resellers or otherwise, are required to file tariffs with the Federal Communications Commission ("FCC"). *United States v. MCI*, 114 S.Ct. 2223 (1994).

[10] Significantly, this Court has expressly cautioned against this sort of speculative conclusion that certain costs have been "passed on" to purchasers: "We repeatedly have recognized that determining whether a particular business cost has in fact been passed on to customers or suppliers entails a highly sophisticated theoretical and factual inquiry. . . ." *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 47 (1990).

increased competition among resellers" leading to price benefits for consumers. Pet. 15. Even if encouraging competition were the purpose of the discriminatory tax scheme—and there is no indication that it is—the distinction still lacks a rational basis. Burdening a competitor hardly appears designed to promote competition, nor would it promote constitutionally-protected interests. Indeed, in the commercial context, requiring states to treat similarly-situated entities in like manner is intended to create a level playing field, so that competitors may fairly compete. *See Metropolitan Life Ins. Co. v. Ward*, 470 U.S. at 878.

Finally, the Commissioner suggests that the distinction must be viewed as permissible in order to avoid the disruption that could result from refunding the unlawfully collected tax. Pet. 9, 18. But the possibility of disruption does not absolve a state from remedying its unconstitutional taxation. As this Court plainly recognized in *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 50 (1990), "the State's interest in financial stability does not justify a refusal to provide relief."

II. THE DECISION BELOW DOES NOT CONFLICT WITH ANY DECISIONS OF OTHER STATE SUPREME COURTS

There are no cases of which we are aware, and the Commissioner has cited none, in which a court upheld disparate taxation of two entities primarily engaged in the same business which performed the same function through use of the same equipment. The cases cited by the Commissioner all involve entities engaged in two separate forms of commerce.[11] Thus, in *Pacific Express Co.*

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[11] The Commissioner's suggestion (Pet. 23) that the decision in *Nordlinger v. Hahn*, 112 S.Ct. 2326, 2329 (1992), invalidated the Ohio Supreme Court's earlier decision in *Boothe Financial Corp. v. Lindley*, 452 N.E.2d 1295 (1983), *cert. denied*, 464 U.S. 1057 (1984), is without foundation. At issue in *Boothe* was not an acquisition-based system of establishing real property values, but

v. Siebert, 142 U.S. 339, 353 (1992) (cited at Pet. 14), this Court held that equal protection is not violated where a tax imposed on one sort of business—express companies—is not imposed on a wholly different business—railroads. Likewise, in *Citizens' Telephone Co. v. Fuller*, 229 U.S. 322, 327 (1913) (cited at Pet. 14), upon which the Commissioner also relies, this Court held it proper for a state to distinguish for tax purposes between a for-profit business and an association that is not engaged in a for-profit venture, a holding that is neither novel nor relevant to this case. The Commissioner's reliance on *American Sugar Refining Co. v. Louisiana*, 179 U.S. 89 (1900), (Pet. 15), is equally misplaced. There, a tax imposed on sugar refiners that did not extend to sugar growers, a separate line of business, was held constitutionally-permissible. The disparate taxation in *American Sugar* not only served a legitimate purpose—encouraging agriculture—it was constitutionally-permissible because the disparate tax was imposed on disparate businesses.[12]

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rather, like the present case, disparate taxation of two entities engaged in the same business.

[12] The cases from state courts of appeals and supreme courts cited by the Commissioner are equally inapplicable. Thus, in *Bosworth v. Pledger*, 810 S.W.2d 918, 923 (Ark.), *cert. denied*, 112 S.Ct. 617 (1991) (cited at Pet. 19, 20), the Arkansas Supreme Court held that the equal protection clause does not preclude a state from taxing private residential customers of telephone service different from business users of telephone service for sales tax purposes. In *State ex rel. Utilities Commission v. Southern Bell Tel. & Tel. Co.*, 363 S.E.2d 73, 83 (N.C. Ct. App. 1987) (cited at Pet. 20), the North Carolina court of appeals held that equal protection does not preclude requiring providers of long distance service to compensate providers of local service for unauthorized local use. The court there did not limit that requirement just to facilities-based carriers or to so-called resellers; to the contrary, it imposed the obligation without regard to any such distinction. In *Chesterfield Cablevision v. County of Chesterfield*, 401 S.E.2d 678, 680 (Va. 1991) (cited at Pet. 20), the Virginia Supreme Court upheld, over a challenge on First Amendment and equal protection grounds, a business license tax applicable to a cable television operator that did not apply to

Significantly, the only state court of last resort to consider the narrow issue here reached exactly the same conclusion as the Supreme Court of Ohio: that differential tax treatment of so-called resellers and facilities-based carriers violates equal protection. In *GTE Sprint v. Wisconsin Bell*, 454 N.W.2d 797 (Wis. 1990), the Wisconsin Court expressly rejected the argument that ownership of facilities was an adequate basis for differentiating between resellers and other carriers for purposes of a sales tax. "The fact that [facilities-based] carriers 'own' the facilities which provide the intermediate link in their telecommunications services while resellers do not does not justify the disparate tax treatment here." *Id.* at 802. As that court recognized, *id.*, the equal protection clause requires that the same tax apply to these similarly-situated entities.

III. IN ANY EVENT, THE DECISION BELOW IS CLEARLY CORRECT BECAUSE THE STATE DID NOT IN FACT APPLY THE DISTINCTION UPON WHICH IT NOW RELIES

Even if the State could justify differential treatment of resellers and facilities-based carriers, that was not the distinction applied by the Commissioner. The property of other facilities-based carriers was assessed at the 31% rate applicable to resellers. As a result, MCI was re-

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radio or television broadcasters. And in *Boston Real Estate Bd. v. Department of Public Utilities*, 136 N.E.2d 243 (Mass. 1956) (cited at Pet. 21), the Massachusetts Supreme Judicial Court held that the equal protection clause, *inter alia*, did not preclude the Department of Public Utilities from establishing a monopoly in the provision of electrical services. *C. Thomas Stores Sales System v. Spaeth*, 297 N.W. 9 (Minn. 1941) (cited at Pet. 21), likewise provides no support for the Commissioner. That case, consistent with a long line of cases from this Court (*see, e.g., Great Atlantic & Pacific Tea Co. v. Grosjean*, 301 U.S. 412 (1937)), held that states may tax chain stores and not tax manufacturers selling their own products. As the Minnesota court there recognized, "chain stores are a distinct business species" from independent merchants. 297 N.W. at 16.

quired to pay taxes based on a 100% assessment, while the property of companies that the Commissioner himself considered identical to MCI was assessed at the lower rate.

Although wholly unaddressed by the Commissioner in his petition, the record clearly demonstrated that other interexchange carriers—those that the Commissioner himself deemed to be "facilities-based"—were assessed at only 31% of true value, while MCI was assessed at 100% of true value. There were more than sixty companies purchasing access—and thus providing long distance service—in Ohio during the relevant period. (R. 655-660). The Commissioner's refusal to produce documents precluded MCI from establishing precisely how many of those companies would fall into the Commissioner's definition of "facilities-based carriers." At the hearing, five companies that appeared on the list of those purchasing access were specifically identified as "facilities-based." The records of two such carriers, *see* n.5 *supra,* demonstrated that both "facilities-based carriers" stood in precisely the same position as MCI. (R. 233-234, 271-275, 315, 661-772, 1027-1055). Nonetheless, neither was assessed at 100% of value. (R. 231-234, 274-276). The Commissioner conceded at the BTA hearing that under the terms of the Ohio Revised Code, "both of the companies should have been filing . . . as MCI has been" and assessed at the 100% rate. (R. 278).

Thus, the distinction upon which the Commissioner now relies—between facilities-based carriers and so-called resellers—was not applied in practice. This discrimination arose in the context of an administrative structure that, as designed, was incapable of discerning compliance at the most basic level—whether a taxpayer was filing under the correct category. (R. 276-279, 288-290, 994-1026). *See Snowden v. Hughes*, 321 U.S. 1, 9 (1944). Under these circumstances, Ohio cannot possibly justify its discriminatory treatment.

As we have discussed, the decision below clearly is correct. It does not conflict with decisions of this Court or the supreme courts of other states. These issues arise only infrequently. Under these circumstances, review by this Court is unwarranted.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

Of Counsel:
WALTER NAGEL
DOUGLAS A. RICHARDS
MCI TELECOMMUNICATIONS CORPORATION
1133 19th Street, N.W.
Washington, D.C. 20036
(202) 736-6216

TIMOTHY B. DYK
(Counsel of Record)
BETH HEIFETZ
JONES, DAY, REAVIS & POGUE
1450 G Street, N.W.
Washington, D.C. 20005-2088
(202) 879-3939

JOHN C. DUFFY, JR.
JONES, DAY, REAVIS & POGUE
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114
(216) 586-3939
Counsel for Respondent

Dated: August 8, 1994